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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,138	12/03/2003	George A. Provost	05918-346001	2304

26161 7590 10/07/2005

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MINNEAPOLIS, MN 55440-1022

EXAMINER
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BEFUMO, JENNA LEIGH

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/728,138

Applicant(s)

PROVOST ET AL.

Examiner

Jenna-Leigh Befumo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) See Continuation Sheet are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Continuation of Disposition of Claims: Claims pending in the application are 1,2,5,6,9,10,15,16,22-25,29,31-33,35-43,45,46,49,54-58,60-63,65-67,70,77-82,87-93,97,99-101,110-115,117,122-126,128,130-144,156-157,159,161,164,165,170,171,175-179,182,184-189,192,195,198,201,203,204 and 207-213.

Continuation of Disposition of Claims: Claims subject to restriction and/or election requirement are 1,2,5,6,9,10,15,16,22-25,29,31-33,35-43,45,46,49,54-58,60-63,65-67,70,77-82,87-93,97,99-101,110-115,117,122-126,128,130-144,156-157,159,161,164,165,170,171,175-179,182,184-189,192,195,198,201,201,204 and 207-213.

## **DETAILED ACTION**

### ***Response to Amendment***

1. The Amendment submitted on June 20, 2005, has been entered. Claims 3, 5, 7, 8, 11–14, 17–21, 26–28, 30, 34, 44, 47, 48, 50–53, 59, 64, 68, 69, 71–76, 83–86, 94–96, 98, 102–109, 116, 118–121, 127, 129, 145–155, 158, 160, 162, 163, 166–169, 172–174, 180, 181, 183, 190, 191, 193, 194, 196, 197, 199, 200, 202, and 204 have been cancelled. Claims 1, 2, 4, 6, 9, 22, 25, 40, 42, 43, 45, 46, 49, 56, 57, 58, 110, 11, 117, 125, 131–133, 156, 157, 159, 161, 164, 165, 175, 178, 179, 187, 188, 192, 195, 198, 201, 205, and 206 have been amended and claims 209–213 have been added. Therefore, the pending claims are 1, 2, 4, 6, 9, 10, 15, 16, 22–25, 29, 31–33, 35–43, 45, 46, 49, 54–58, 60–63, 65–67, 70, 77–82, 87–93, 97, 99–101, 110–115, 117, 122–126, 128, 130–144, 156, 157, 159, 161, 164, 165, 170, 171, 175–179, 182, 184–189, 192, 195, 198, 201, 203, 204, and 207–213.

### ***Election/Restrictions***

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I. Claims 1, 2, 4, 6, 9, 10, 15, 16, 22–25, 29, 31–33, 35–43, 45, 46, 49, 54–58, 60–63, 65–67, 70, 77–82, 87–93, 97, 99–101, 110–115, 117, 122–126, 128, 130–144, and 209 – 213, drawn to a method of making a loop product, classified in class 28, subclass 103.
  - II. Claims 156, 157, 159, 161, 164, 165, 170, 171, 175 – 179, 182, 184 – 189, 192, 195, 198, 201, 203, and 205 - 208, drawn to a loop product, classified in class 428, subclass 85.

The inventions are distinct, each from the other because of the following reasons:

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3. Inventions I and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be made by applying a thermoplastic binder to bottom of the carrier sheet and fusing the binder to attach the loop to the carrier sheet.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. If the Applicant chooses Group I, an election must also be made as set forth below.

6. This application contains claims directed to the following patentably distinct species of the claimed invention: the method of making the loop fastener wherein a patterned product is produced by embossing, needling in discrete areas, applying binder material in discrete areas, or applying fibers unevenly on the carrier sheet.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, 1, 2, 4, 6, 10, 15, 16, 29, 31, 32, 33, 46, 49, and 211 – 213 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

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Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

7. This application contains claims directed to the following patentably distinct species of the claimed invention: the type of the binder (i.e., second layer of film, particulate binder, liquid, or stretchable).

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, 1, 2, 4, 6, 10, 15, 16, 29, 31, 32, 33, 46, 49, and 211 – 213 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

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Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

8. If the Applicant choose Group II, the following elections must be made.

9. This application contains claims directed to the following patentably distinct species of the claimed invention: different construction of the carrier sheet and composite (i.e., a second layer of film added, the carrier sheet is a film, the carrier sheet is stretchable, the carrier sheet has projections, the carrier sheet is pre-printed, the composite is patterned, and the carrier sheet has binder fused to thereto).

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, 156, 157, 159, 161, 165, 170, 171, 1178, 179, 182, 195, 195, and 198 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable

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thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

10. And if the applicant chooses the patterned structure then the following election must be made.

11. This application contains claims directed to the following patentably distinct species of the claimed invention: different loop patterned structures (i.e., the fabric is embossed to produce a pattern, needling density is varied to produce a pattern, the fiber density is varied to create a pattern, and binder is applied in a pattern).

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.



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Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

12. Due to the complexity of the election, a telephone call was not made to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

13. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

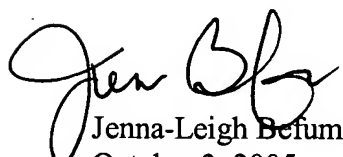
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application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jenna-Leigh Befumo  
October 3, 2005